

2017.10.16



APPENDIX A

PROVISIONS OF THE CONSTITUTION OF THE UNITED STATES AT ISSUE

Article I, Section 8, Clause 2—The Commerce Clause.

“The Congress shall have Power . . .

* * * * *

to regulate Commerce with foreign Nations, and among the several States . . .”

Article VI—The Supremacy Clause.

* * * * *

“This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.”

Amendment XIV.

“Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

Appendix A

Amendment XXI.

“Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.”

FEDERAL STATUTES AT ISSUE

The Sherman Act—28 U. S. C. §§ 1-7 (1959).

“Section 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. . . .”

The Robinson-Patman Act—15 U. S. C. §§ 13(a)-(f), 21(a) (1959).

“Sec. 2 (a) That it shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided*, That nothing herein contained shall prevent differentials which make only due allowance for differences in the

Appendix A

cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: *Provided, however,* That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: *And provided further,* That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: *And provided further,* That nothing herein contained shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

“(b) Upon proof being made, at any hearing on a complaint under this section, that there has been discrimination in price or services or facilities furnished, the burden of rebutting the *prima-facie* case thus made by showing justification shall be upon the person charged with a violation of this section, and unless justification shall be affirmatively shown, the Commission is authorized to issue an order terminating the discrimination: *Provided, however,* That nothing herein contained shall prevent a seller rebutting

Appendix A

the *prima-facie* case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

* * * * *

“(d) That it shall be unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionately equal terms to all other customers competing in the distribution of such products or commodities.

“(e) That it shall be unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

* * * * *

*Appendix A***LAWS OF NEW YORK.****CHAPTER 531**

AN ACT to amend the alcoholic beverage control law, in relation to authorizing the issuance of special licenses to sell liquor at retail for on-premises consumption, prohibiting price discrimination in sales to wholesalers and retailers, prohibiting liquor sales below cost at retail for off-premises consumption, regulating the minimum consumer resale price of wine, repealing section one hundred one-c of such law relating to minimum consumer resale prices, repealing subdivisions four and four-a of section one hundred five of such law relating to required minimum distances between premises licensed to sell at retail for off-premises consumption and making an appropriation therefor

Became a law April 16, 1964, with the approval of the Governor. Passed, on message pursuant to article IV, section 3 and message of necessity, pursuant to article III, section 14 of the Constitution, by a majority vote, three-fifths being present

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision three of section fifty-five of the alcoholic beverage control law, as last amended by chapter nine hundred five of the laws of nineteen hundred sixty-one, is hereby amended to read as follows:

3. No such license shall be issued, however, to any person for any premises other than *premises for which a license may be issued under section sixty-four or sixty-four-a of this chapter or a hotel [club, vessel, car, or such] or premises which are kept, used, maintained, advertised or held out to the public to be a place where food is prepared and served for consumption on the premises in such quantities as to satisfy the liquor authority that the sale of beer intended is incidental to and not the prime source of revenue from the operation of such premises.* The foregoing provisions of this subdivision shall not apply to any prem-

EXPLANATION — Matter in *italics* is new; matter in brackets [] is old law to be omitted.

Those portions of Section 7 of Ch. 531 at issue in the instant case are underscored. See pp. A-13, A-14. Section 9 of Ch. 531 is set forth at A-17 through A-20.

Appendix A

ises located at, in, or on the area leased by the city of New York to New York World's Fair 1964 Corporation pursuant to the provisions of chapter four hundred twenty-eight of the laws of nineteen hundred sixty, as amended by a chapter of the laws of nineteen hundred sixty-one, during the term or duration of such lease. Such license may also include such suitable space outside of the licensed premises and adjoining it as may be approved by the liquor authority.

§ 2. Section sixty of such law is hereby amended to read as follows:

§ 60. Kinds of licenses. The following kinds of licenses may be issued for the manufacture and sale of liquor, alcohol and spirits, to wit:

1. Distiller's license, class A.
2. Distiller's license, class B.
- 2-a. Distiller's license, class C.
3. Wholesaler's license.
4. License to sell liquor at retail for consumption off the premises.
5. License to sell liquor at retail for consumption on the premises.
6. *Special license to sell liquor at retail for consumption on the premises.*

§ 3. Subdivision one of section sixty-four of such law is hereby amended to read as follows:

1. **【Any】** *Notwithstanding the provisions of subdivision two of section seventeen of this chapter, any person may make an application to the appropriate board for a license to sell liquor at retail to be consumed on the premises where sold, and such licenses shall be issued to all applicants except for good cause shown.*

Appendix A

§ 4. Such law is hereby amended by adding thereto a new section, to be section sixty-four-a, to read as follows:

§ 64-a. *Special license to sell liquor at retail for consumption on the premises.* 1. *On or before March first, nineteen hundred sixty-five, any license issued under section sixty-four of this article may be converted into a special on-premises license under this section upon the granting of a request for conversion filed with the liquor authority by the holder of said license. Such a request shall be granted by the authority except for good cause shown. The granting of such a request shall constitute conversion of said license into a special on-premises license subject to the provisions of this chapter applicable to special on-premises licenses issued under this section.*

2. *On or after October first, nineteen hundred sixty-four, any person may make an application to the appropriate board for a special license to sell liquor at retail to be consumed on the premises where sold.*

3. *Such application shall be in such form and shall contain such information as shall be required by the rules of the liquor authority and shall be accompanied by a certified check, bank-officers' check or draft, or money order in the amount required by this article for such license.*

4. *Section fifty-four shall control so far as applicable the procedure in connection with such application.*

5. *Such special license shall in form and in substance be a license to the person specifically licensed to sell liquor at retail to be consumed on the premises specifically licensed. Such license shall also be deemed to include a license to sell wine and beer at retail to be consumed under the same terms and conditions, without the payment of any additional fee.*

6. *No special on-premises license shall be granted except for premises in which the principal business shall be*

Appendix A

(a) the sale of food or beverages at retail for consumption on the premises or (b) the operation of a legitimate theatre or such other lawful adult entertainment or recreational facility as the liquor authority, giving due regard to the convenience of the public and the strict avoidance of sales prohibited by this chapter, shall by regulation classify for eligibility. Nothing contained in this subdivision shall be deemed to authorize the issuance of a license to a motion picture theatre.

7. No special on-premises license shall be granted for any premises which shall be on the same street or avenue and within two hundred feet of a building occupied exclusively as a school, church, synagogue or other place of worship; the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed; except that no license shall be denied to any premises at which a license under this chapter has been in existence continuously from a date prior to the date when a building on the same street or avenue and within two hundred feet of said premises has been occupied exclusively as a school, church, synagogue or other place of worship.

8. Every special on-premises licensee shall regularly keep food available for sale to its customers for consumption on the premises. The availability of sandwiches, soups or other foods, whether fresh, processed, pre-cooked or frozen, shall be deemed compliance with this requirement. The licensed premises shall comply at all times with all the regulations of the local department of health. Nothing contained in this subdivision, however, shall be construed to require that any food be sold or purchased with any liquor, nor shall any rule, regulation or standard be promulgated or enforced requiring that the sale of food be substantial or

Appendix A

that the receipts of the business other than from the sale of liquor equal any set percentage of total receipts from sales made therein.

9. The liquor authority may make such rules as it deems necessary to carry out the provisions of this section.

§ 5. Subdivision four of section sixty-six of such law, as last amended by chapter two hundred four of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

4. The annual fee for a license to sell liquor at retail to be consumed on the premises where sold shall be fifteen hundred dollars in the counties of New York, Kings, Bronx and Queens; ten hundred dollars in the county of Richmond and in cities having a population of more than one hundred thousand and less than one million; seven hundred fifty dollars in cities having a population of more than fifty thousand and less than one hundred thousand; and the sum of five hundred dollars elsewhere; except that the license fees for catering establishments shall be two-thirds and for clubs, except luncheon clubs and golf clubs, shall be one-half the license fee specified herein. The annual fees for luncheon clubs shall be three hundred seventy-five dollars, and for golf clubs in the counties of New York, Kings, Bronx, Queens, Nassau, Richmond and Westchester, two hundred fifty dollars, and elsewhere one hundred eighty-seven dollars and fifty cents. *The annual fee for a special license to sell liquor at retail to be consumed on the premises where sold shall be seventeen hundred dollars in the counties of New York, Kings, Bronx and Queens; twelve hundred dollars in the county of Richmond and in cities having a population of more than one hundred thousand and less than one million; nine hundred fifty dollars in cities having a population of more than fifty thousand and less than one hundred thousand; and the sum of seven hundred*

Appendix A

dollars elsewhere. Provided, however, that where any premises for which a license is issued pursuant to section sixty-four or sixty-four-a of this article remain [a hotel, restaurant or club remains] open only within the period commencing April first and ending October thirty-first of any one year, the liquor authority may, in its discretion, grant to the person owning or operating such premises [hotel, restaurant or club] a summer license effective only for such period of time, for which a license fee shall be paid to be pro-rated for the period for which such license is effective, at the rate provided for in the city, town or village in which such [hotel, restaurant or club is] premises are located, except that no such license fee shall be less than one-half of the regular annual license fee; provided further that where the premises to be licensed [is] are a race track or a golf course, the period of such summer license may commence March first and end November thirtieth.

Where a hotel, restaurant, club, golf course or race track is open prior to April first and/or subsequent to October thirty-first by reason of the issuance of a caterer's permit or permits issued by the authority, such fact alone shall not affect the eligibility of the premises or the person owning or operating such hotel, restaurant, club, golf course or race track for a summer license.

§ 6. Section ninety-nine-c of such law, as amended by chapter six hundred fifteen of the laws of nineteen hundred forty-eight, is hereby amended to read as follows:

§ 99-c. *Special permit authorizing sale on credit.* Notwithstanding any other provision of this chapter to the contrary, any person licensed to sell alcoholic beverages for consumption on the premises pursuant to *section sixty-four of this chapter*, may apply to the liquor authority for a special permit authorizing such licensee to sell alcoholic

Appendix A

beverages for consumption on the premises on credit, provided such sale is made only as an incident to the sale of food to be consumed on the premises.

The annual fee for such special permit, for any year commencing on or after March first, nineteen hundred forty-eight, and which shall run concurrently with the annual term of the license for on-premises consumption, shall be one thousand dollars in the counties of New York, Kings, Bronx, Queens and Richmond; and eight hundred dollars elsewhere within the state; provided, however, that where a hotel or restaurant remains open only within the period commencing April first and ending October thirty-first of any one year, the liquor authority may, in its discretion, grant to the hotel or restaurant licensee such special permit effective only for such period of time for which the special permit fee to be paid shall be prorated for the period for which such special permit is effective, at the rate provided for in the city, town or village in which such hotel or restaurant is located, except that no such special permit fee shall be less than one-half of the regular special permit fee.

Where application for such special permit under this section is made after the commencement of the license year, the special permit fee therefor shall, for the balance of the license year, be in proportion as the remainder of such year shall bear to the whole year, except that it shall in no case be for less than one-half of such year.

The liquor authority may, in its discretion, and upon such terms and conditions as it may prescribe, issue such a special permit.

§ 7. Section one hundred one-b of such law, as added by chapter eight hundred ninety-nine of the laws of nineteen hundred forty-two, subdivision four thereof having been amended by chapter five hundred fifty-one of the laws of

Appendix A

nineteen hundred forty-eight, is hereby amended to read as follows:

§ 101-b. Unlawful discriminations prohibited; filing of schedules; schedule listing fund. 1. It is the declared policy of the state that it is necessary to regulate and control the manufacture, sale, and distribution within the state of alcoholic beverages for the purpose of fostering and promoting temperance in their consumption and respect for and obedience to the law. In order to eliminate the undue stimulation of sales of alcoholic beverages and the practice of manufacturers and wholesalers in granting discounts, rebates, allowances, free goods, and other inducements to selected licensees, which contribute to a disorderly distribution of alcoholic beverages, and which are detrimental to the proper regulation of the liquor industry and contrary to the interests of temperance, it is hereby further declared as the policy of the state that the sale of alcoholic beverages should be subjected to certain restrictions, prohibitions and regulations. The necessity for the enactment of the provisions of this section is, therefore, declared as a matter of legislative determination.

2. It shall be unlawful for any person [privileged to sell] *who sells* liquors or wines to wholesalers or retailers

(a) to discriminate, directly or indirectly, in price, in discounts for time of payment or in discounts on quantity of merchandise sold, between one wholesaler and another wholesaler, or between one retailer and another retailer purchasing liquor or wine bearing the same brand or trade name and of like age and quality[.]; (b) to grant, directly or indirectly, any discount, rebate, free goods, allowance or other inducement of *any kind whatsoever*, except a discount not in excess of two per centum for quantity of liquor, a discount not in excess of five per centum for quantity of

Appendix A

wine and a discount not in excess of one per centum for payment on or before ten days from date of shipment.

3. (a) No brand of liquor or wine shall be sold [(within the state)] to or purchased by a wholesaler, [or retailer]] irrespective of the place of sale or delivery, unless a schedule, as provided by this section, is filed with the liquor authority, and is then in effect. [(b) The] Such schedule shall be in writing duly verified, and filed in the number of copies and form as required by the authority, and shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to wholesalers, the net bottle and case price [to retailers] paid by the seller, [(the number of bottles contained in each case,)] which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any. Such brand of liquor or wine shall not be sold to wholesalers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. [(c) The] Such schedule [(containing the bottle and case price to wholesalers)] shall be filed by (1) the owner of such brand, or (2) a wholesaler selling such brand and who is designated as agent for the purpose of filing such schedule if the owner of the brand is not licensed by the authority, or (3) with the approval of the authority, by a wholesaler, in the event that the owner of the brand is unable to file a schedule or designate an agent for such purpose.

(b) No brand of liquor or wine shall be sold to or purchased by a retailer unless a schedule, as provided by this section, is filed with the liquor authority, and is then in

Appendix A

effect. Such schedule shall be in writing duly verified, and filed in the number of copies and form as required by the authority, and shall contain, with respect to each item, the exact brand or trade name, capacity of package, nature of contents, age and proof where stated on the label, the number of bottles contained in each case, the bottle and case price to retailers, the net bottle and case price paid by the seller, which prices, in each instance, shall be individual for each item and not in "combination" with any other item, the discounts for quantity, if any, and the discounts for time of payment, if any. Such brand of liquor or wine shall not be sold to retailers except at the price and discounts then in effect unless prior written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter. (d) The] Such schedule [containing the bottle and case price to retailers] shall be filed by each manufacturer [and wholesaler who sell brands of liquors or wines] selling such brand to retailers and by each wholesaler selling such brand to retailers.

(e) (c) Provided however, nothing contained in this section shall require any manufacturer or wholesaler to list in any schedule to be filed pursuant to this section any item offered for sale to a retailer under a brand which is owned exclusively by one retailer and sold at retail within the state *exclusively* by such retailer.

4. Each such schedule shall be filed on or before the tenth day of each month on a date to be fixed by the authority, and the prices and discounts therein set forth shall become effective on the first day of the calendar month following the filing thereof and shall be in effect for such calendar month. Within ten days after the filing of such schedule the authority shall make them or a composite thereof available for inspection by licensees. Within three

Appendix A

business days after such inspection is provided for, a wholesaler may amend his filed schedule for sales to retailers in order to meet lower competing prices and discounts for liquor or wine of the same brand or trade name, and of like age and quality, filed pursuant to this section by any licensee selling such brand, provided such amended prices are not lower and discounts are not greater than those to be met. Any amended schedule so filed shall become effective on the first day of the calendar month following the filing thereof and shall be in effect for such calendar month. [No brand of liquor or wine shall be sold except at the price then in effect unless written permission of the authority is granted for good cause shown and for reasons not inconsistent with the purpose of this chapter.] All schedules filed shall be subject to public inspection, from the time that they are required to be made available for inspection by licensees, and shall not be considered confidential. Each manufacturer and wholesaler shall retain in his licensed premises for inspection by licensees a copy of his filed schedules as then in effect. The liquor authority may make such rules as shall be appropriate to carry out the purpose of this section.

5. For the purpose of raising the moneys necessary to defray the expenses incurred in the administration of this section, on or before the tenth day after this act becomes a law, there shall be paid to the liquor authority by each manufacturer and wholesaler licensed under this chapter to sell to retailers liquors and/or wines, a sum equivalent to ten per centum of the annual license fee prescribed by this chapter for each such licensee. A like sum shall be paid by each person hereafter applying for any such license or the renewal of any such license, and such sum shall accompany the application and the license fee prescribed by this chapter for such license or renewal as the case may be. In the event that any other law requires the payment of a fee by any such licensee or applicant as set forth in this section

Appendix A

for schedule listing, then and in such event the total fee imposed by this section and such other law or laws on each such licensee shall not exceed in the aggregate a sum equivalent to ten per centum of the annual license fee prescribed by this chapter for such license.

6. The authority may revoke, cancel or suspend any license issued pursuant to this chapter, and may recover (as provided in section one hundred twelve of this chapter) the penal sum of the bond filed by a licensee, or both, for any sale or purchase in violation of any of the provisions of this section or for making a false statement in any schedule filed pursuant to this section or for failing or refusing in any manner to comply with any of the provisions of this section.

§ 8. In enacting section eleven of this act, it is the firm intention of the legislature (a) that fundamental principles of price competition should prevail in the manufacture, sale and distribution of liquor in this state, (b) that consumers of alcoholic beverages in this state should not be discriminated against or disadvantaged by paying unjustifiably higher prices for brands of liquor than are paid by consumers in other states, and that price discrimination and favoritism are contrary to the best interests and welfare of the people of this state, and (c) that enactment of section eleven of this act will provide a basis for eliminating such discrimination against and disadvantage of consumers in this state. In order to forestall possible monopolistic and anticompetitive practices designed to frustrate the elimination of such discrimination and disadvantage, it is hereby further declared that the sale of liquor should be subjected to certain further restrictions, prohibitions and regulations, and the necessity for the enactment of the provisions of section nine of this act is, therefore, declared as a matter of legislative determination.

Appendix A

§ 9. Subdivision three of section one hundred one-b of such law, as amended by section seven of this act, is hereby amended to add eight new paragraphs, to be paragraphs (d), (e), (f), (g), (h), (i), (j) and (k), to read as follows:

(d) *There shall be filed in connection with and when filed shall be deemed part of the schedule filed for a brand of liquor pursuant to paragraph (a) of this subdivision an affirmation duly verified by the owner of such brand of liquor, or by the wholesaler designated as agent for the purpose of filing such schedule if the owner of the brand of liquor is not licensed by the authority, that the bottle and case price of liquor to wholesalers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such brand owner or such wholesaler designated as agent, or any related person, to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed. As used in this paragraph (d), the term "related person" shall mean any person (1) in the business of which such brand owner or wholesaler designated as agent has an interest, direct or indirect, by stock or other security ownership, as lender or lienor, or by interlocking directors or officers, or (2) the exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent, or (3) which has an exclusive franchise or contract to sell such brand or brands.*

(e) *There shall be filed in connection with and when filed shall be deemed part of any other schedule filed for a brand of liquor pursuant to paragraph (a) of this subdivision an affirmation duly verified by the person filing such schedule that the bottle and case price of liquor to wholesalers set*

Appendix A

forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such person to any wholesaler anywhere in any other state of the United States or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed.

(f) There shall be filed in connection with and when filed shall be deemed part of any schedule filed for a brand of liquor pursuant to paragraph (b) of this subdivision by the owner of such brand of liquor, or by the wholesaler designated as agent for the purpose of filing such schedule if the owner of the brand of liquor is not licensed by the authority, or by a related person, an affirmation duly verified by such brand owner or such wholesaler designated as agent that the bottle and case price of liquor to retailers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such brand owner of such wholesaler designated as agent, or any related person, to any retailer anywhere in any other state of the United States or in the District of Columbia, other than to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month immediately preceding the month in which such schedule is filed. As used in this paragraph (f), the term "related person" shall mean any person (1) in the business of which such brand owner or wholesaler designated as agent has an interest, direct or indirect, by stock or other security ownership, as lender or lienor, or by interlocking directors or officers, or (2) the exclusive, principal or substantial business of which is the sale of a brand or brands of liquor purchased from such brand owner or wholesaler designated as agent, or (3) who has an exclusive franchise or contract to sell such brand or brands.

Appendix A

(g) *There shall be filed in connection with and when filed shall be deemed part of any other schedule filed for a brand of liquor pursuant to paragraph (b) of this subdivision an affirmation duly verified by the person filing such schedule that the bottle and case price of liquor to retailers set forth in such schedule is no higher than the lowest price at which such item of liquor was sold by such person to any retailer anywhere in any other state of the United States or in the District of Columbia, other than to any state (or state agency) which owns and operates retail liquor stores, at any time during the calendar month preceding the month in which such schedule is filed.*

(h) *In the event an affirmation with respect to any item of liquor is not filed within the time provided by this section, any schedule for which such affirmation is required shall be deemed invalid with respect to such item of liquor, and no such item may be sold to or purchased by any wholesaler or retailer during the period covered by any such schedule.*

(i) *In determining the lowest price for which any item of liquor was sold in any other state or in the District of Columbia, or to any state (or state agency) which owns and operates retail liquor stores, appropriate reductions shall be made to reflect all discounts in excess of those to be in effect under such schedule, and all rebates, free goods, allowances and other inducements of any kind whatsoever offered or given to any such wholesaler, state (or state agency) or retailer, as the case may be, purchasing such item in such other state or in the District of Columbia; provided that nothing contained in paragraphs (d), (e), (f) and (g) of this subdivision shall prevent differentials in price which make only due allowance for differences in state taxes and fees, and in the actual cost of delivery. As used in this paragraph, the term "state taxes or fees" shall mean the excise taxes imposed or the fees required by any state or*

Appendix A

the District of Columbia upon or based upon the gallon of liquor, and the term "gallon" shall mean one hundred twenty-eight fluid ounces.

(j) Notwithstanding and in lieu of any other penalty provided in any other provisions of this chapter, any person who makes a false statement in any affirmation made and filed pursuant to paragraph (d), (e), (f) or (g) of this subdivision shall be guilty of a misdemeanor, and upon conviction thereof shall be punishable by a fine of not more than ten thousand dollars or by imprisonment in a county jail or penitentiary for a term of not more than six months or by both such fine and imprisonment. Every affirmation made and filed pursuant to paragraph (d), (e), (f) or (g) of this subdivision shall be deemed to have been made in every county in this state in which the brand of liquor is offered for sale under the terms of said schedule. The attorney general or any district attorney may prosecute any person charged with the commission of a violation of this paragraph. In any such prosecution by the attorney general, he may appear in person or by his deputy or assistant before any court or any grand jury and exercise all the powers and perform all the duties in respect of any such proceeding which the district attorney would otherwise be authorized or required to exercise or perform, and in such prosecution the district attorney shall only exercise such powers and perform such duties as are required of him by the attorney general or his deputy or assistant so attending.

(k) Upon final judgment of conviction of any person after appeal, or in the event no appeal is taken, upon the expiration of the time during which an appeal could have been taken, the liquor authority may refuse to accept for any period of months not exceeding three calendar months any affirmation required to be filed by such person.

Appendix A

§ 10. Such law is hereby amended by adding thereto a new section, to be section one hundred one-bb, to read as follows:

§ 101-bb. Prohibition against retail sales at less than cost. 1. It is the declared policy of the state that it is necessary to regulate and control the manufacture, sale and distribution within the state of liquor for the purpose of fostering and promoting temperance in its consumption and respect for and obedience to the law. In order to eliminate retail sales of liquor at less than cost which unduly disrupt the orderly sale and distribution of liquor, it is hereby declared as the policy of the state that the sale of liquor should be subjected to certain restrictions, prohibitions and regulations. The necessity for the enactment of the provisions of this section is, therefore, declared as a matter of legislative determination.

2. No licensee authorized to sell liquor at retail for off-premises consumption shall sell, offer to sell, solicit an order for or advertise any item of liquor at a price which is less than cost. As used in this section, the term:

(a) "liquor" shall mean liquor bearing a brand or trade name, and of like age and quality, which is contained in a schedule filed with the authority pursuant to section one hundred one-b of this article, and

(b) "cost" shall mean the price of such item of liquor to retailers contained in the applicable schedule filed with the authority pursuant to section one hundred one-b of this article and which is in effect at the time such licensee sells, offers to sell, solicits an order for or advertises such liquor at retail. As used in this paragraph (b), the term "price" shall mean bottle price, before any discounts, contained in such schedule.

3. Nothing contained in this section, however, shall prevent such licensee from selling, offering to sell or soliciting an order for such liquor at a price less than cost, provided

Appendix A

that prior written permission therefor is granted by the authority for good cause shown and for reasons not inconsistent with the purpose of this chapter and under such terms and conditions as the authority deems necessary.

4. The authority is hereby authorized to promulgate rules which are necessary

(a) to carry out the purpose of this section and to prevent its circumvention;

(b) to permit the sale of liquor which is damaged or deteriorated in quality, or the close-out of a brand for the purpose of discontinuing its sale, at a price which is less than cost and under such terms and conditions as are necessary to carry out the purposes of this section;

(c) to permit the sale whenever necessary to avoid practical difficulties or unnecessary hardships to any licensee affected by this section or because of acts or circumstances beyond the control of such licensee, at a price which is less than cost and under such terms and conditions as are necessary to carry out the purposes of this section.

5. For the violation of any provision of this section or of any rule duly promulgated under this section, the authority may: for a first offense, suspend a license for a period not exceeding ten days; for a second offense, suspend a license for a period not exceeding thirty days; and for a third offense, suspend, cancel or revoke a license. In addition, for any such offense, the authority may recover, as provided in section one hundred twelve of this chapter, the penal sum of the bond filed by the licensee.

6. For the purpose of raising the moneys necessary to defray the expenses incurred in the administration of this section, there shall be paid to the authority by each person hereafter applying for a license as manufacturer, wholesaler and retailer as hereinafter set forth, the following sums: distiller licensee or wholesale liquor licensee, sixty

Appendix A

dollars; retail liquor licensee for off-premises consumption, ten dollars. A like sum shall be paid by each person hereafter applying for the renewal of any such license, and such sums shall accompany the application and the license fee prescribed by this chapter for such license or renewal thereof, as the case may be. The fees prescribed by this subdivision shall not be pro-rated for any portion of the license year and shall have no refund value.

§ 11. Section one hundred one-c of such law, as added by chapter six hundred eighty-nine of the laws of nineteen hundred fifty, is hereby **repealed**.

§ 12. Such law is hereby amended by adding thereto a new section, to be section one hundred one-bbb, to read as follows:

§ 101-bbb. *Minimum consumer resale prices of wine.* 1. *It is the declared policy of the state that it is necessary to regulate and control the manufacture, sale and distribution of wine for the purpose of promoting the orderly sale and distribution thereof. It is hereby declared as the policy of the state that the sale of wine should be subjected to certain restrictions, prohibitions and regulations. The necessity for the enactment of the provisions of this section is, therefore, declared as a matter of legislative determination.*

2. *No manufacturer or wholesaler of wine shall sell, offer for sale, solicit any order for or advertise any wine, the container of which bears a label stating the brand or the name of the owner or producer, unless a schedule of minimum consumer resale prices for each such brand of wine shall first have been filed with the liquor authority, and such schedule is then in effect, except that written permission therefor may be granted by the authority for good cause shown and for reasons not inconsistent with the purposes of this section and under such terms and conditions as the authority deems necessary.*

Appendix A

3. (a) Such schedule shall be filed by (1) the manufacturer or wholesaler who owns such brand, if licensed by the authority, or (2) a wholesaler, selling such brand, who is appointed as exclusive agent, in writing, by the brand owner for the purpose of filing such schedule, if the brand owner is not licensed by the authority, or (3) any wholesaler, with the approval of the authority, in the event that the owner of such brand does not file or is unable to file a schedule or designate an agent for such purpose.

(b) Such schedule shall be in writing duly verified, and filed in the number of copies and in the form required by the authority, and shall contain with respect to each brand, the brand or trade name, capacity of the container, nature of contents, age and proof where stated on the label, the minimum consumer resale price of a bottle and/or a case, but not a multiple of a bottle price or a case price or a fraction of a case price. Such prices shall be uniform throughout the state.

(c) The first schedule shall be filed on or before the tenth day of September, nineteen hundred sixty-four on a date to be fixed by the authority, and the prices therein set forth shall become effective on the first day of November, nineteen hundred sixty-four and shall remain in effect for the months of November and December, nineteen hundred sixty-four. Subsequent schedules shall be filed at the times and for the periods hereinafter set forth and shall be effective during the periods hereinafter set forth:

Filing Date	Effective Dates
<i>November 1-10</i>	<i>January 1-February 28</i>
<i>January 1-10</i>	<i>March 1-April 30</i>
<i>March 1-10</i>	<i>May 1-June 30</i>
<i>May 1-10</i>	<i>July 1-August 31</i>
<i>July 1-10</i>	<i>September 1-October 31</i>
<i>September 1-10</i>	<i>November 1-December 31</i>

Appendix A

(d) Provided, however, nothing contained herein shall require any manufacturer or wholesaler to file a schedule of minimum consumer resale prices for any brand of wine offered for sale or sold (1) to a retailer under a brand which is owned exclusively by such retailer and sold within the state exclusively by such retailer; (2) to a consumer or to a church, synagogue or religious organization under a brand which is owned exclusively by such manufacturer or wholesaler, if authorized to sell wine to such persons and such wine is sold exclusively to such persons; (3) to on-premises retailers under a brand which is owned exclusively by such manufacturer or wholesaler and is sold by such manufacturer or wholesaler exclusively to such retailers for consumption on the premises.

4. Within ten days after the filing of such schedules the authority shall make them or a composite thereof available for inspection by licensees. All schedules so filed shall be subject to public inspection, from the time that they are required to be made available for inspection to licensees. Each manufacturer and wholesaler shall retain in his licensed premises a copy of his filed schedules. The authority shall, as soon as practicable after the tenth day of the month in which such schedules are filed compile, publish and furnish to each manufacturer or wholesaler of wine and to each retailer authorized to sell wine for off-premises consumption, a list, to be designated "minimum consumer resale price list for wine". Such list as then in effect shall be conspicuously displayed within the interior of licensed premises where sales are made and where they can be readily inspected by consumers.

5. No licensee authorized to sell wine at retail for off-premises consumption shall sell, offer to sell, solicit an order for or advertise any wine at a price less than the minimum consumer resale price then in effect, unless written permis-

Appendix A

sion of the authority is granted for good cause shown and for reasons not inconsistent with the purposes of this section and under such terms and conditions as the authority deems necessary.

6. The authority is hereby authorized to promulgate rules which are necessary

(a) to carry out the purpose of this section and to prevent its circumvention by the offering or giving of any rebate, allowance, free goods, discount or any other thing or service of value;

(b) to permit the withdrawal of, an addition to, a deletion from, or an amendment of any schedule or a modification of prices therein, when not inconsistent with the purposes of this section, whenever necessary to avoid practical difficulties or unnecessary hardships to any licensee affected by this section or because of acts or circumstances beyond the control of such licensee, and under such terms and conditions as are necessary to carry out the purposes of this section;

(c) to permit the sale at a price less than the minimum consumer resale price of wine which is damaged or deteriorated in quality, or the close-out of a brand for the purpose of discontinuing its sale, under such terms and conditions as are necessary to carry out the purposes of this section;

(d) to permit the sale by a retailer of a brand of wine for which a schedule of minimum consumer resale prices has not been and cannot be filed, whenever necessary to avoid practical difficulties or unnecessary hardships to any licensee affected by this section or because of acts or circumstances beyond the control of such licensee, and under such terms and conditions as are necessary to carry out the purposes of this section.

Appendix A

7. For the violation of any provision of this section or of any rule duly promulgated under this section, the authority may suspend, cancel or revoke a license as follows: for a first offense, not exceeding ten days suspension of license; for a second offense, not exceeding thirty days suspension of license; and for a third offense, the authority may suspend, cancel or revoke the license. In addition, for any such offense, the authority may recover, as provided in section one hundred twelve, the penal sum of the bond filed by the licensee.

8. For the purpose of raising the moneys necessary to defray the expenses incurred in the administration of this section, there shall be paid to the authority by each person hereafter applying for a license as manufacturer, wholesaler and retailer as hereinafter set forth, the following sums: winery licensee or wholesale wine licensee, fifty dollars; retail wine licensee for off-premises consumption, ten dollars. A like sum shall be paid by each person hereafter applying for the renewal of any such license, and such sums shall accompany the application and the license fee prescribed by this chapter for such license or renewal thereof, as the case may be. The fees prescribed by this subdivision shall not be pro-rated for any portion of the license year and shall have no refund value.

§ 13. Subdivisions four and four-a of section one hundred five of such law, subdivision four having been amended by chapter five hundred twenty of the laws of nineteen hundred forty-seven, and subdivision four-a having been amended by chapter five hundred sixty-six of the laws of nineteen hundred forty-one, are hereby **repealed**.

§ 14. Nothing contained in section thirteen of this act shall be construed as impairing or affecting the power of the state liquor authority to determine, in accordance with

Appendix A

other provisions of the alcoholic beverage control law, whether public convenience and advantage will be promoted by the issuance of licenses to traffic in alcoholic beverages, the increase or decrease in the number thereof and the location of premises licensed thereby.

§ 15. Subdivision nineteen of section one hundred five of such law, as added by chapter nine hundred twenty-seven of the laws of nineteen hundred fifty-eight, is hereby amended to read as follows:

19. No licensee authorized to sell beer *or liquor* at retail for consumption off the premises shall display any sign on or adjacent to the licensed premises, setting forth the price at which beer *or liquor*, or any brand thereof, is sold or offered for sale, or advertise such price in any other manner or by any other means, except in the interior of the licensed premises.

§ 16. Subdivisions four and nine of section one hundred six of such law, paragraph (d) of subdivision nine having last been renumbered and amended by chapter four hundred sixty-seven of the laws of nineteen hundred fifty-five, are hereby amended to read, respectively, as follows:

4. (a) No liquors and/or wines shall be sold or served in **[such licensed]** premises *licensed under section sixty-four or clause (a) of subdivision six of section sixty-four-a of this chapter*, except at tables where food may be served and except as provided by subdivision four of section one hundred.

(b) *No liquors and/or wines shall be sold or served in premises licensed under clause (b) of subdivision six of section sixty-four-a of this chapter, except at such times and upon such conditions and by the use of such facilities as the liquor authority, by regulation, may prescribe with*

Appendix A

due regard to the convenience of the public and the strict avoidance of sales prohibited by this chapter.

9. No restaurant and no premises licensed to sell liquors and/or wines for on-premises consumption under clause (a) of subdivision six of section sixty-four-a of this chapter shall be permitted to have:

- (a) Any screen, blind, curtain, article or thing covering any part of any window on said licensed premises, which prevents a clear and full view into the interior of said premises from the sidewalk at all times;
- (b) Any swinging entrance door;
- (c) Any box, stall, partition or any obstruction which prevents a full view of the entire room by every person present therein; and
- (d) ~~1.~~ Any opening or means of entrance or passageway for persons or things between the licensed premises and any other room or place in the building containing the licensed premises, or any adjoining or abutting premises, unless such licensed premises are in a building used as a hotel and serves as a dining room for guests of such hotel; or unless such licensed premises are in a building owned or operated by any county, town, city, village or public authority or agency, in a park or other similar place of public accommodation. All glass in any window or door on said licensed premises shall be clear and shall not be opaque, colored, stained or frosted.

§ 17. Paragraph (d) of subdivision three of section one hundred seven of such law is hereby amended to read as follows:

- (d) Form of notice for on-premises license. Notice is hereby given that license (fill in beer, liquor or wine as the case may be, and license number) has been issued to the undersigned to sell (beer, liquor or wine, as the case may be)

Appendix A

at retail in a (hotel, club, restaurant, vessel, **or** car, or other type of establishment, as the case may be) under the alcoholic beverage control law at (fill in street address, city, town or village and county in which licensed premises are located) for on-premises consumption.

(Name of licensee)
(Address of licensee)

§ 18. Paragraph (b) of subdivision four of section one hundred seven-a of such law, such subdivision having been added by chapter two hundred four of the laws of nineteen hundred sixty-three, is hereby amended to read as follows:

(b) An application for registration of a brand or trade name label shall be filed by (1) the owner of the brand or trade name if such owner is licensed by the authority, or (2) a wholesaler selling such brand who is appointed as exclusive agent, in writing, by the owner of the brand or trade name for the purpose of filing such application, if the owner of the brand or trade name is not licensed by the authority, or (3) any wholesaler, with the approval of the authority, in the event that the owner of the brand or trade name does not file or is unable to file such application or designate an agent for such purposes, or (4) any wholesaler, with the approval of the authority, in the event that the owner of the brand or trade name is a retailer who does not file such application, provided that the retailer shall consent to such filing by such wholesaler. Such retailer may revoke his consent at any time, upon written notice to the authority and to such wholesaler.

Unless otherwise permitted or required by the authority, the application for registration of a liquor or wine brand or trade name label filed pursuant to this section shall be filed by the same licensee filing schedules pursuant to sections one hundred one-b and one hundred **one-c** one-bbb of this chapter.

Appendix A

Cordials and wines which differ only as to fluid content, age, or vintage year, as defined by such regulations, shall be considered the same brand; and those that differ as to type or class may be considered the same brand by the authority where consistent with the purposes of this section.

§ 19. Subdivision one of section one hundred forty-one of such law, as amended by chapter four hundred twenty-six of the laws of nineteen hundred thirty-nine, is hereby amended to read as follows:

1. Not less than forty-five days nor more than sixty days before the general election in the year nineteen hundred thirty-five in any town, and before any subsequent general election in the town at which the submission of the questions hereinafter stated is authorized by this article, a petition signed by electors of the town to a number amounting to twenty-five per centum of the votes cast in the town for governor at the then last preceding gubernatorial election, acknowledged by the signers or authenticated by witnesses as provided in the election law in respect of a designating petition, requesting the submission at such election to the electors of the town of the questions contained in either group A or group B, may be filed with the town clerk:

GROUP A

Question 1. Selling alcoholic beverages to be consumed on the premises where sold. Shall any person be authorized to sell alcoholic beverages at retail to be consumed on [the] premises [where sold in (here insert the name of the town)] licensed pursuant to the provisions of section sixty-four of this chapter?

Question 2. Selling alcoholic beverages to be consumed on the premises where sold. Shall any person be authorized to sell alcoholic beverages at retail to be consumed on

Appendix A

premises licensed pursuant to the provisions of section sixty-four-a of this chapter?

Question [2.] 3. Selling alcoholic beverages not to be consumed on the premises where sold. Shall any person be authorized to sell alcoholic beverages at retail not to be consumed on the premises where sold in (here insert the name of the town)?

Question [3.] 4. Selling alcoholic beverages by hotel keepers only. Shall any person be authorized to sell alcoholic beverages at retail to be consumed on the premises where sold but only in connection with the business of keeping a hotel (here insert the name of the town), if the majority of the votes cast on the first question submitted are in the negative?

Question [4.] 5. Selling alcoholic beverages by summer hotel keepers only. Shall any person be authorized to sell alcoholic beverages at retail to be consumed on the premises where sold but only in connection with the business of keeping a summer hotel within the period from May first to October thirty-first, in (here insert the name of the town), if the majority of the votes cast on the first question submitted are in the negative?

GROUP B

Question 1. Selling liquor or wine to be consumed on the premises where sold. Shall any person be authorized to sell liquor or wine at retail to be consumed on [the] premises [where sold in (here insert the name of the town)] licensed pursuant to the provisions of section sixty-four of this chapter?

Question 2. Selling liquor or wine to be consumed on the premises where sold. Shall any person be authorized to sell liquor or wine at retail to be consumed on premises licensed pursuant to the provisions of section sixty-four-a of this chapter?

Appendix A

Question [2.] 3. Selling liquor or wine not to be consumed on the premises where sold. Shall any person be authorized to sell liquor or wine at retail not to be consumed on the premises where sold in (here insert the name of the town)?

Question [3.] 4. Selling liquor or wine by hotel keepers only. Shall any person be authorized to sell liquor or wine at retail to be consumed on the premises where sold but only in connection with the business of keeping a hotel in (here insert the name of the town), if the majority of the votes cast on the first question submitted are in the negative?

Question [4.] 5. Selling liquor or wine by summer hotel keepers only. Shall any person be authorized to sell liquor or wine at retail to be consumed on the premises where sold but only in connection with the business of keeping a summer hotel within the period from May first to October thirty-first, in (here insert the name of the town), if the majority of the votes cast on the first question submitted are in the negative?

§ 20. If any provision of any section of this act or the application thereof to any person or circumstance shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any section of this act or the application of any part thereof to any other person or circumstance and to this end the provisions of each section of this act are hereby declared to be severable.

§ 21. The sum of one hundred thousand dollars (\$100,000), or so much thereof as may be necessary, is hereby appropriated to the state liquor authority, payable on the audit and warrant of the state comptroller on vouch-

Appendix A

ers certified or approved by the chairman of the authority, out of moneys in the state treasury not otherwise appropriated, in order to carry out the provisions of this act.

§ 22. Sections thirteen, fourteen, twenty and twenty-one of this act shall take effect immediately; sections one, two, three, four, five, six, sixteen, seventeen and nineteen of this act shall take effect June first, nineteen hundred sixty-four; and sections seven, eight, nine, ten, eleven, twelve, fifteen and eighteen of this act shall take effect October thirty-first, nineteen hundred sixty-four, except that those provisions of section twelve of this act requiring the filing of schedules on or before September ten, nineteen hundred sixty-four shall take effect September first, nineteen hundred sixty-four.